IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 23228 of 2007(M)

PETITIONER:

MANAGER, UNITY WOMEN'S COLLEGE,
P.O. NARUKARA, MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.A.A.ABUL HASSAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
COMMISSIONER AND SECRETARY, HIGHER EDUCATION
DEPARTMENT, THIRUVANANTHAPURAM.

2. DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, NORTH ZONE,NEAR HEAD POST OFFICE,
KOZHIKODE.

4. UNIVERSITY OF CALICUT,CALICUT
UNIVERSITY P.O.,REPRESENTED BY ITS REGISTRAR.

BY GOVERNMENT PLEADER SMT. M.R. SREELATHA.
P.C. SASIDHARAN – SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.23228 OF 2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF THE ORDER NO.GA.II/A3/1081/94 DTD 21.12.94 OF THE UNIVERSITY OF CALICUT.

EXT.P2: COPY OF THE ORDER NO.GA.II/A3/137/95 DTD 10.7.95 OF UNIVERSITY OF CALICUT.

EXT.P3: COPY OF THE ORDER NO.GA I-A3/1887/93 DTD 15.1.94 OF THE UNIVERSITY OF CALICUT.

EXT.P4: COPY OF THE ORDER NO.GAII/A3/1161/95 DTD 17.7.95 OF THE UNIVERSITY OF CALICUT.

EXT.P5: COPY OF THE JUDGMENT IN W.P.(C)NO.12109/06 DTD 17.1.2007 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT.

EXT.P6: COPY OF THE JUDGMENT IN W.A.NO.940/07 DTD 21.6.2007 PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT.

EXT.P7: COPY OF THE RESIGNATION LETTER OF SMT. SULAIKHA A.M., DTD 26.7.2006.

EXT.P8: COPY OF THE RESIGNATION LETTER OF SMT. VINEETHA DTD 27.2.2007.

EXT.P9: COPY OF THE LETTER NO.G/44(C)/2007 ISSUED BY THE PRINCIPAL OF THE PETITIONER'S COLLEGE TO THE 1ST RESPONDENT DTD 17.4.2007.

EXT.P10: COPY OF THE LETTER NO.G/44(c)/2007 ISSUED BY THE PRINCIPAL OF THE PETITIONER'S COLLEGE TO THE 2ND RESPONDENT DTD. 17.04.2007

EXT.P11: COPY OF THE LETTER NO.G/44(c)/2007 ISSUED BY THE PRINCIPAL OF THE PETITIONER'S COLLEGE TO THE 3RD RESPONDENT DTD. 17.04.2007.

EXT.P12: TRUE COPY OF GOVERNMENT ORDER NO.11899/B1/97/H.EDN. DTD 3.7.1997 ISSUED BY THE 1ST RESPONDENT.

EXT.P13: COPY OF THE REPLY NO.23851/D2/97/H.EDN. DATED 13.8.1997 ISSUED BY THE 1ST RESPONDENT.

EXT.P14: COPY OF THE LETTER NO.G1/41/07 DTD 23.4.2007 ISSUED BY THE PRINCIPAL OF THE COLLEGE TO THE 1ST RESPONDENT.

EXT.P15: COPY OF THE REMINDER NO.COPY OF THE LETTER NO.G1/41/2007 DTD.21.7.2007 ISSUED BY THE PRINCIPAL OF THE PETITIONER'S COLLEGE TO THE 1ST RESPONDENT

EXT.P16: COPY OF THE LETTER NO.G/18/2007 DATED 9.7.2007 ISSUED BY THE PRINCIPAL OF THE PETITIONER'S COLLEGE TO THE 4TH RESPONDENT

EXT.P17: COPY OF THE ADVERTISEMENT DTD 18.7.07 APPEARED IN MALAYALA MANORAMA DAILY.

EXT.P17(A): COPY OF THE ADVERTISEMENT DTD 18.7.07 APEPARED IN MATHRUBHUMI DAILY.

EXT.P17(B): COPY OF THE ADVERTISEMENT DTD 18.7.2007 APPEARED IN THE HINDU DAILY.

EXT.P17(C): COPY OF THE ADVERTISEMENT DTD 18.7.07 APPEARED IN THE NEW INDIAN EXPRESS DAILY.

EXT.P18: TRUE COPY OF THE LETTER DTD 17.8.2007 OF THE PRINCIPAL OF THE PETITINER'S COLLEGE.

EXT.P19: COPY OF THE LETTER DATED 18.8.2007 ISSUED BY SRI.K.T. MOHAMMED, ADDL. SECRETARY TO GOVERNMENT.

EXT.P20: COPY OF THE LETTER DTD 20.8.2007 OF THE PRINCIPAL OF THE PETITINER'S COLELGE.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No. 23228 OF 2007

Dated this the 6th day of November, 2007

JUDGMENT

The petitioner is the manager of the Unity Women's College, Manjeri which is an aided College. By Exts.P1 and P3 orders, the 4th respondent- University sanctioned one post each of Lecturer in Mathematics and English and against those posts two teachers were appointed, after selection by a duly constituted selection committee. Their appointments were approved by the 4th respondent by Exts.P2 and P4 orders and their salary were also disbursed. Subsequently, they resigned from the service of the petitioner's College, as a result of which the post fell vacant.

2. The petitioner's present grievance is that respondents 1 and 4 are not permitting the petitioner to fill up the posts on the ground that, those posts can be filled up only after obtaining prior sanction from the Government as required under the University laws (Amendment) Act, 2005 which was brought into force on 6.1.2005. According to the petitioner, the prior sanction is necessary only in respect of posts newly created subsequent to

coming into force of the Amendment Act and not to posts which are already existing which falls vacant. The petitioner would submit that the two posts to which the petitioner seeks permission to make appointments were posts sanctioned as early as in 1994, to which the petitioner had already made appointments which were approved and the vacancies arose only on account of the incumbents having resigned from the service of the College. That being so, according to the petitioner, no prior sanction is necessary for filling up those vacancies. The petitioner relies on Exts.P5 and P6 judgments in support of his contention.

3. In view of Ext.P6 judgment, it cannot be disputed by the respondents that prior sanction is necessary from the Government only in respect of new posts which have been created subsequent to the Amendment Act. It is not disputed before me that the vacancies which have arisen now were in respect of posts which were sanctioned long before University Laws (Amendment) Act 2005 came into force. Therefore, going by Ext.P6 judgment no such sanction is necessary for filling up the two posts in question.

4. In the above circumstances, the writ petition is

allowed and respondents 1 and 4 are directed to nominate their representatives to the selection committee for selection of lecturers to the said vacancies and permit the petitioner to make selection to the vacant posts. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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